IT 05-0037-GIL 07/25/2005 SUBTRACTION MODIFICATIONS – PENSIONS

> General Information Letter: Gain on sale of employer securities distributed from qualified retirement plan is exempt from income tax.

July 25, 2005

Dear:

This is in response to your letter dated June 28, 2005 in which you state the following:

> I have an elderly relative in a retirement home, 87 years old who was a career person that worked in the executive office of COMPANY1 from 1938 to 1976 and participated in their savings and profit sharing fund. There were two spin offs one for COMPANY2 and the other COMPANY3. She depended on the COMPANY1 stock dividends to pay her rent. Recently COMPANY4 took over COMPANY1 and was forced to sell her COMPANY1 stock because COMPANY4 does not pay a dividend.
>
> I enclose a directive regarding Illinois Income Tax Act as to the savings and profit sharing fund of COMPANY1 employees. On retirement she had a cost basis of $14.15 per share and sold the stock in excess of this price. Whats the purpose of this directive and can you give me an explanation how it effects her.
>
> I was told to mail it to Legal Services office 5-500. Please advise. She is angry because she has lost her dividend income, may have to pay some income tax, and start paying her rent from another source of income, a three way loser.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website http://www.revenue.state.il.us/legalinformation/regs/part1200.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

The directive you attached to your letter from COMPANY1 to employees participating in the Savings and Profit Sharing Fund indicates that the Fund is a federal tax qualified retirement plan. This is because the letter specifically states that distributions from the Fund will not have any Illinois income tax consequences. Any amount received from a qualified plan, to the extent included in federal AGI under IRC sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408, is subtracted from the computation of an individual's Illinois net income. The statutory authority is found in Section 203(a)(2)(F) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.):

> Section 203. Base income defined
>
> (a) Individuals.
>
> (1) In general. In the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable years as modified by paragraph (2).
>
> (2) Modifications. The adjusted gross income referred to in paragraph (1) shall be modified … by deducting from the total so obtained the sum of the following amounts:

(F) An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto;

. . .

Assuming that the Fund is a qualified retirement plan, IITA Section 203(a)(2)(F) permits all distributions from the Fund to be subtracted from your relative's adjusted gross income. This subtraction includes any gain attributable to the net unrealized appreciation from the sale of the stocks within the Fund. Your relative may claim the gain from the sale of the stocks as a subtraction on Form IL-4644, line 13. The amount on line 13 of Form IL-4644 is included in the amount on line 5 of Form IL-1040. For your convenience, enclosed please find a copy of Form IL-4644 along with its instructions.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax